

## 300-3009-7 Attachment 1

CONSERVATION PROGRAMS MANUAL (CPM)  
440 – CPM  
Circular No. 50

May 29, 2008

SUBJECT: PGM – Business Processes for the Wetlands Reserve Program

Purpose. To provide guidance to the States on revised business procedures for Wetlands Reserve Program (WRP) easement acquisition and restoration activities.

Effective Date. Effective immediately.

Background. Historically, NRCS committed WRP single-year treasury funds for WRP administration, acquisition, and restoration when the applicant provided NRCS with a signed Notification of Intent to Continue. NRCS obligated WRP single-year treasury funds for WRP administration, acquisition, and restoration when the applicant provided NRCS with a signed Option Agreement to Purchase (OATP). The administrative costs included survey and closing costs. The amounts obligated were an estimated cost based on historic averages. Appraisal costs were obligated after the application was ranked and selected for funding. The acquisition costs included the easement compensation value based on a valid appraisal. Restoration costs included the cost to restore the easements based on a preliminary restoration plan.

Reviews and audits by the Office of Inspector General, the Chief Financial Officer, and the Office of Management and Budget have raised concerns about the proper use of single-year treasury funds and the high amount of de-obligations of prior year funds. It is necessary to change the process previously used to obligate funds for WRP to ensure fund accountability and reduce the amount of future de-obligations.

Policy. The new business process is as follows:

WRP allows for a continuous application process. Applications received should be evaluated and ranked as soon as possible throughout the year. The evaluation and ranking should be completed in the fiscal year prior to the fiscal year the application will be considered for funding. Each state must develop and utilize an application checklist to ensure that all required information for the applicant is provided before the application is considered for funding.

Evaluation of the applications involves three primary steps:

1. **G**athering landowner information and preliminary investigations.
2. **O**nsite land eligibility determination, environmental ranking, and developing preliminary plan information.
3. **S**electing for funding.

### **STEP 1**

Step 1 includes items that must be completed before moving the application forward in the process:

- A. Determine landowner eligibility:
  - Landowner must provide a copy of the vesting deed to the land.

- Landowner must secure proof from the Farm Services Agency (FSA) that all individuals on the deed are compliant with the Highly Erodible Lands and Wetlands Conservation Compliance (HELC/WC Compliance) provisions of the Farm Bill.
  - Landowner must secure proof from FSA that all individuals on the deed are eligible to participate based on the Adjusted Gross Income provisions of the Farm Bill.
  - If the landowner is an entity □
    - The entity must provide to FSA a list of the individuals that comprise the entity including the percent of ownership for each individual.
    - The entity must secure proof from FSA that each individual within the entity is in compliance with the HELC/WC and AGI provisions of the Farm Bill.
    - The entity must provide documents to the FSA and the NRCS that show the entity to be a legal and valid entity in the State and which member(s) has the authority to sign contractual documents on behalf of the entity.
- B. Conduct a preliminary title search to determine if there are title issues that would preclude or delay enrolling the land in WRP.
- C. Conduct a preliminary records search as part of Environmental Due Diligence/All Appropriate Inquiry (AAI) to ensure there are no potential hazardous substance issues that would preclude or delay enrollment of the land in WRP or affect the appraised value.

NOTE. – Generally, NRCS will secure preliminary title search and preliminary record search services from a non-NRCS vendor. These services will be procured using an appropriate method, and funds will be obligated directly to that contract.

## **STEP 2**

Step 2 will be conducted only after all items required in step 1 have been satisfactorily completed. In step 2, an on site investigation will be conducted to □

- A. Determine land eligibility.
- B. Conduct preliminary planning activities.
- C. Complete the environmental ranking.

Before any other steps are completed, the land must be determined eligible for participation in WRP. After this determination has been made, the site will be evaluated and the ranking worksheet completed. The Hazardous Substance Checklist, Preliminary Certificate of Inspection and Possession, National Historic Preservation Act Assessment, National Environmental Policy Act Environmental Assessment, and an Endangered Species Act Assessment must also be completed. Next, a preliminary restoration plan will be developed. Preliminary plans developed during the on site visit will not be used to estimate costs for restoration fund obligation. The purpose of the preliminary plan is to document that the proposed restoration meets the objectives of the landowner and the requirements of the WRP as determined by NRCS. The landowner will sign the preliminary restoration plan to document that they are in concurrence with the proposed restoration. The plan will also include an estimate of restoration costs which will be used for ranking purposes only.

## **STEP 3**

Step 3 of the application process involves selecting the applications that will be offered tentative funding approval. The State Conservationist (STC) will set one or more cut-off dates for funding consideration.

Only applications received and processed through steps 1 and 2 of the application process before the cut-off date will be considered.

Once applications are listed in rank order, STC's will select the number of applications they estimate can be funded based on the State's historic allocation levels. They should select sufficient applications to accommodate the historic dropout rate as well. Appraisals will be ordered for the selected applications for enrollment in one of the easement options. If possible appraisals should be secured in the fiscal year preceding the fiscal year when the easement will actually be selected for funding.

Funds for the appraisal will not be obligated to the individual application. States will obtain the appraisal services through an appropriate procurement method. Funds will be obligated to the procurement document as appropriate. It is recommended that States use a Blanket Purchase Agreement or Indefinite Delivery/Indefinite Quantity type arrangement. Funds would be obligated as appraisals are ordered through a task order process.

A letter of tentative selection will be provided to each selected application. This letter will be sent using certified mail with a return receipt. The letter will indicate that this tentative selection is not a promise of funding but will provide information about continuing the enrollment process and ensure landowner continued interest. (See attachment 1 - Example Letter.)

The Form AD-1159, Notification of Intent to Continue, will no longer be used. Funds will no longer be committed at this time, and the acres will not be considered enrolled in the program. The local NRCS representative will contact the landowner to determine if the applicant still wishes to be considered for WRP. If the landowner remains interested arrange an appointment to meet with the appraiser and the landowner. If the landowner wishes to withdraw the application, the State Office will be notified immediately.

If the application is for a restoration cost-share agreement the final restoration plan and engineering design should be developed at this time.

When program funds are available for the new fiscal year, an Option Agreement to Purchase (Form AD-1157) will be prepared for easement applications that have a completed and properly reviewed appraisal and that have been selected for funding. The landowner will always be offered the lesser of the following:

- The geographic area rate cap.
- The easement compensation value required by statute.
- An amount voluntarily offered by the landowner.

The AD-1157 should be sent with a cover letter by certified mail, with a return receipt. The AD-1157 can be hand delivered to speed up the process. When the AD-1157 is hand delivered, the applicant will sign a note indicating receipt of the form and the date it was received. The applicant will be given a specified time frame to return the AD-1157. This is generally 15 days, but can be less depending on program obligation deadlines.

When the Option Agreement to Purchase has been signed by the applicant and the State Conservationist or designee, the acres will be considered enrolled in the program. At this time, the funds will be obligated for the easement purchase cost only.

For restoration cost-share agreements, the final restoration plan will be based on final engineering designs and costs. Once the AD-1154, Long Term Contract, and supporting documents including the AD-1155, have been signed by the State Conservationist or designee, the acres are considered enrolled in the program. At that time, funds will be obligated to the contract.

After the Option Agreement to Purchase has been signed, a legal boundary survey will be ordered. Legal boundary surveys will be conducted on all easements that have reached this stage of the process. The funds for the survey will not be obligated to each individual application. The surveys will be obtained using an appropriate procurement method, and funds will be obligated to the procurement document for the surveys. It is recommended that States use a Blanket Purchase Agreement or Indefinite Delivery/Indefinite Quantity type arrangement. Funds would be obligated as surveys are ordered through a task order process.

When the survey has been completed and accepted as properly completed and accurate, an Option Agreement to Purchase Amendment (Form AD-1157A) will be necessary to reflect the correct acres indicated by the survey. Any changes on the Option Agreement to Purchase Amendment will be done in accordance with Circular 31. Once the Option Agreement to Purchase Amendment is signed by the landowner and State Conservationist, or designee, the obligation will be adjusted in the Foundation Financial Information System (FFIS) if necessary. The application will then be scheduled to begin the closing process.

Funds for the closing services will not be obligated to each individual application. Closing services will be secured through an appropriate procurement method, and funds will be obligated directly to that procurement document. It is recommended that States use a Blanket Purchase Agreement or Indefinite Delivery/Indefinite Quantity type arrangement. Funds would be obligated as closing services are ordered through a task order process.

Unless prohibited by state or local law, payments will not be made to a closing agent. To ensure proper attribution of USDA payments, easement payments will be issued directly to the landowner. Payments may continue to be made to closing agents in those locales that where it is required.

When the final restoration plan has been developed and final engineering designs have been completed, a decision will be made as to how the restoration will be completed. If restoration will be completed through a Long Term Contract with the landowner, the AD-1154, AD-1155, and other appropriate documents will be prepared. After these documents have been signed by the State Conservationist or designee, funds will be obligated for the restoration. If restoration will be completed using some other appropriate procurement method, the appropriate documents will be prepared. When these documents have been signed by the State Conservationist or designee, the funds will be obligated directly to that procurement document, not to the individual easement. Restoration funds may not always be obligated in the same fiscal year that easement purchase funds are obligated. Regardless of the method to be used for completing the restoration, the final restoration plan will be signed by both NRCS and the landowner.

/s/

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Attachment 1 – Sample Letter of Tentative Acceptance  
Attachment 2 – Business Process Flow Chart  
Attachment 3 – Business Process Flow Chart – Action Details